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4 Plaintiff, Pro se

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9 **UNITED STATES DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION**

11 **VOICE INTERNATIONAL, INC., a**
12 **California corporation; DAVID**
GROBER, an individual,

13 **Plaintiffs,**

14 **vs.**

15 **OPPENHEIMER CINE RENTAL,**
16 **LLC, et al.,**

17 **Defendants**

Case No.: 2:15-cv-08830-JAK(KS)

Plaintiffs' Opposition To
Defendants' Motions In Limine To
Exclude Documents Produced After
The Close of Discovery
(Doc. 360)

Pretrial Conf. Date: Sept. 30, 2019
Time: 1:30 pm
Place: Courtroom 10B, First Street

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2 Defendants “move this Court to exclude the introduction at trial of
3 documents dumped by plaintiffs on defendants after the close of discovery.” Doc.
4 360, page 2. Defendants contend only documents DG00001 – DG03421 were
5 produced before discovery closed on April 30, 2018. *Id.*, page 3.

6 Defendants’ motion is factually inaccurate, as documents Bates stamped
7 DG00001 – DG07961 were produced by April 30, 2018, and documents numbered
8 DG07962 – DG08064 were produced 8 days later after being received the previous
9 day from a subpoena issued in April. See attached emails confirming same. (Ex. 1)

10 After the Court’s October 1, 2018 tentative order saying the parties should
11 supplement their document production, Plaintiffs made such requests to
12 Defendants. Mr. Young stated that it was Plaintiffs that needed to supplement their
13 discovery production, claiming it was wholly inadequate. Plaintiffs went back and
14 supplemented with additional documents that were now relevant with Klein Sr.
15 being in the case. Those documents, among other things, included communications
16 between Klein, Grober’s employee Steve Waterford, Tom Smith, and substantiate
17 the misappropriation of Plaintiffs’ trade secrets and components to build the
18 MakoHead, Klein Sr.’s accounting records showing his payments to Waterford, and
19 other documents relevant to development of the Perfect Horizon now that Klein Sr.
20 was in the mix. The early time frame of the invention was called into question and
21 Plaintiffs supplemented information on David Grober and his development of his
22 invention, the patent and commercialization. Defendants never made any statement
23 or complaint when these documents were produced. And to be sure, were likely
24 scoured looking for cracks in Plaintiffs’ case. Plaintiffs did exactly what
25 Defendants asked for.

26 Suddenly at the meet and confer on September 9, 2019, Defendants raised
27 this issue for the first time.
28

1 Defendants wish to exclude any documentary reference to the creation of the
2 MakoHead, and how it came into existence in 2001-2004. This includes the fact
3 that Klein Sr., prior to the existence of the company he started, Mako Products,
4 Inc., (MPI) paid Plaintiffs' Florida technician, Steve Waterford, over \$20,000
5 (1099's), while Waterford worked for Plaintiffs, to hand over Grober's Perfect
6 Horizon components and trade secrets. Communications obtained in discovery are
7 brutal in their discussion of how, after stealing Grober's components and trade
8 secrets, and bringing to market Klein Sr.'s MakoHead, how Waterford and Klein
9 would siphon off Plaintiffs' clients.

10
11 Once the Mako Head is near ready to hit the market (but
12 not yet on the market), I will need to immediately,
13 formally & entirely abandon my business association with
14 MPM and return all his equipment. (I'll come up with my
15 own stated rationales for doing that; but they will be
16 completely unrelated to working for you.) Thereafter,
17 whenever I receive calls from potential clients I will tell
18 them that I no longer represent, or recommend, the Hydro
19 Gyro but highly recommend the Mako Head. I'll then give
20 those clients your contact information and tell them to
21 state my referral.

22 Further documentation clarifies specific components of Plaintiffs that were
23 passed on to Klein and his engineer Tom Smith. Emails between or including
24 Waterford and Klein Sr., are specific in the trade secrets and components being
25 stolen from Grober, underwritten by Klein's payments to Waterford. These
26 activities cannot be excluded as they show the creation of the MakoHead, its
27 technical basis as a copy of Plaintiffs' device, and are part and parcel of willful
28 infringement.

That Plaintiffs' documents identified individuals involved in developing or
improving Plaintiffs' stabilization system, and Defendants' objection that they were
not named inventors and Defendants did not know of them or have an opportunity

1 to depose them, is false and misleading to the Court, at best. Pg. 4, L 11-16, and
2 Pg. 5, L25 – Pg. 6, L 1. The only persons of any pertinent relationship to Grober’s
3 invention were Grober’s independent contractor engineer, Scott Lewallen, and
4 Grober’s employee, Steve Waterford whom Klein Sr. paid for Grober’s technology.

5 The instant case Defendant, Klein Sr., owner of Mako Products, Inc. (MPI)
6 in Mako-1, had counsel take the deposition of Scott Lewallen in Seattle,
7 Washington on October 30, 2008, specifically on inventorship. Furthermore, in this
8 case, Mr. Young subpoenaed all of Scott Lewallen’s documents. Mr. Young also
9 received a copy of Lewallen’s declaration from Mako-1 wherein Lewallen stated
10 his involvement and that he did not consider he had any role in inventorship.

11 Steve Waterford was likewise deposed in Mako-1 by Plaintiffs and MPI,
12 owned by Klein Sr. on June 11, 2008.

13 Klein Sr.’s company, MPI, deposed Grober in Mako-1 on November 14,
14 2007. Grober was deposed a second time by the four brick and mortar rental house
15 Defendants that Klein Sr. left to shoulder the infringement case when Klein Sr. took
16 MPI into bankruptcy in October 2012. The four rental houses hired Coast Law
17 Group for their defense. The second deposition of Grober in Mako-1, on March 15,
18 2016, was conducted by David Peck, who now represents Defendants in the instant
19 case. Defendants statement pertaining to misjoinder and nonjoinder are without a
20 base, and “Defendants cannot depose Plaintiffs about inventorship” is likewise
21 misleading because Defendant Klein Sr., already took two depositions on the issue,
22 Lewallen’s and Waterford, as well as Grober’s deposition twice.

23 All of the documents that Defendants request to be excluded were provided
24 within the deadlines, or when discovery had been extended, and if it can be argued
25 not, then certainly after Defendants complained that Plaintiffs had not provided
26 enough discovery, asked for more. Now that they don’t like that discovery, they
27 want it excluded, stating they have been short changed. If the Court believes that is
28 an issue, Plaintiffs will accommodate Defendants by allowing a third deposition of

1 David Grober, not to exceed three hours, at the offices of Lauson and Associates,
2 between October 2 and 9, on objected subjects, and Plaintiffs will pay for the court
3 reporter.

4 For those reasons, and also for the reason that the documents tell the truth,
5 and in this case with the continued trips before the Magistrate with the Plaintiffs
6 being the moving party, and it being shown that Defendants were not forthcoming,
7 in areas such as alter ego resulting in the 60b motion, the truth should be on the
8 table for the jury.

9 Respectfully Submitted,

10 Dated: September 23, 2019

11 By: /David Grober
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